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Attorneys for Plaintiff
DOMINIC ANTHONY MARROCCO

UNITED STATES DISTRICT COURT
DISTRICT COURT

DOMINIC ANTHONY MARROCCO, an
individual,

Plaintiff,

vs.

MARK A. HILL, an individual; and
MARCELLOUS McZEAL, an individual,

Defendants.

Case No. 2:12-cv-00028-JCM-RJJ

**MOTION FOR FEES AND COSTS
INCURRED IN RESPONDING TO
DEFENDANTS' OBJECTION TO
THIS COURT'S ORDER
GRANTING PLAINTIFF'S
COUNTERMOTION TO COMPEL
DISCOVERY**

Pursuant to Federal Rule of Civil Procedure 37(a)(5)(A), Plaintiff Dominic Anthony Marrocco ("Marrocco") requests that this Court grant his fees incurred in responding to Defendants Mark Hill's and Marcellous McZeal's (collectively, "Defendants") Objection to this Court's Order Granting Plaintiff's Countermotion to Compel Discovery. An award of fees incurred in responding to Defendants' Objection is proper because although Marrocco was awarded (and has applied for) his fees incurred in prosecuting his original motion to compel, he has incurred additional fees as a result of Defendants' Objection to the Order granting that Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Magistrate Judge Koppe Grants Marrocco's Motion to Compel and Defendants File an Objection Thereto Which Is Overruled

The present dispute in this case arises out of Defendants' alleged failure to properly respond to discovery requests. On April 18, 2012, Marrocco served Defendants with his First Discovery Requests. Defendants provided their responses to the requests for admission on May 21, 2012, and the interrogatories on May 25, 2012. On April 11, 2012, Marrocco filed a Countermotion to Compel Responses to Written Discovery and for Award of Fees Incurred in Bringing Countermotion (the "Motion to Compel"). (Dkt. #32). On January 25, 2013, Magistrate Judge Koppe granted the Motion to Compel and granted Marrocco his costs and fees incurred therein. (Dkt. #48). In the Order Granting the Motion to Compel, Magistrate Judge Koppe instructed Marrocco to submit an affidavit of fees and costs by January 31, 2013.

Accordingly, on January 31, 2013, Marrocco submitted an Affidavit of Fees and Costs requesting \$10,000. (Dkt. #49). However, Defendants filed a nineteen page Objection to Magistrate Judge Koppe's Order (Dkt. #51), requiring Marrocco to respond (Dkt. #52). On May 15, 2013, District Judge Mahan ordered that the Defendants' Objection to Magistrate Judge Koppe's Order were overruled. (Dkt. #58).

II. This Court Should Award Marrocco His Fees Incurred in Responding to Defendants' Objection to the Court's Order Granting Marrocco's Motion to Compel

Federal Rule of Civil Procedure 37(a)(5)(A) provides:

(5) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion [to compel] is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

Here, the Court has already granted Marrocco's Motion to Compel and awarded him the fees incurred in bringing that motion. However, because Marrocco had to respond to Defendants' nineteen page Objection to Magistrate Judge Koppe's Order, Marrocco now requests his attorneys' fees incurred therein because those fees were "incurred in making the motion."¹

III. Marrocco Has Incurred \$4,535 in Additional Fees Responding to Defendants' Objection to Magistrate Koppe's Order

As is detailed in the Supplemental Affidavit of Charles H. McCrea, Jr. (attached hereto as Exhibit 1), Marrocco incurred a total of \$4,535 in attorneys' fees associated with responding to Defendants' Objection to Magistrate Judge Koppe's Order. The attorneys' fees incurred are reasonable and were necessary for successfully responding to Defendants' Objection to Magistrate Judge Koppe's Order. As Marrocco has incurred an additional \$4,535 in attorneys' fees, Marrocco requests that this Court award him \$4,535 in addition to the \$10,000 requested in the Affidavit filed on January 31, 2013.

LIONEL SAWYER & COLLINS

By: /s/ Ketan D. Bhirud
Charles McCrea (NSB #104)
Ketan D. Bhirud (NSB #10515)

Attorneys for Plaintiff
DOMINIC ANTHONY MARROCCO

¹ *MAS, Inc. v. Nocheck, LLC*, 10-CV-13147, 2011 WL 1135367, *4 (E.D. Mich. Mar. 28, 2011) (stating that fees incurred in opposing objections to a magistrate judge's order are "incurred in making the motion.")

Exhibit 1

Exhibit 1

LIONEL SAWYER & COLLINS
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**SUPPLEMENTAL AFFIDAVIT OF
FEES AND COSTS**

Charles H. McCrea, Jr., being duly sworn says:

1. I am an attorney at law duly licensed to practice law before all courts in the State of Nevada (State Bar No. 104).

2. I am a shareholder in the law firm of Lionel Sawyer & Collins, attorneys for Dominic Anthony Marrocco ("Plaintiff"), the Plaintiff in this matter.

3. I have personal knowledge of the matters stated below and could testify competently to them if called upon to do so.

4. I make this Affidavit (1) in response to this Court's Order dated January 24, 2013 granting Plaintiff's Countermotion to Compel Discovery; and (2) to supplement my original Affidavit of Fees and Costs, which was submitted on January 31, 2013 (Dkt. 49).

5. Responding to Defendants' Objection to this Court's Order Granting Plaintiff's Countermotion to Compel Discovery required the skills and expertise of one partner and one

1 associate. Ketan Bhirud and I were the principle attorneys involved. Mr. Bhirud is a sixth-year
 2 litigation associate. I am a partner with over thirty-five years of experience in all aspects of
 3 commercial litigation.

4 6. I have reviewed the invoices and time records prepared by Lionel Sawyer &
 5 Collins regarding this matter.

6 7. Based upon those invoices and time records, I have determined that between
 7 February 11, 2013, and February 21, 2013, Plaintiff incurred a total of \$4,535 in attorneys' fees
 8 associated with responding to Defendants' Objection to this Court's Order Granting Plaintiff's
 9 Countermotion to Compel Discovery.

10 8. The document attached as Exhibit 1 to this Affidavit is a true and correct
 11 summary itemization of the attorneys' fees incurred by Plaintiff in connection with responding to
 12 Defendants' Objection to this Court's Order Granting Plaintiff's Countermotion to Compel
 13 Discovery.

14 9. The attorneys' fees incurred are reasonable and were necessary for successfully
 15 responding to Defendants' Objection to this Court's Order Granting Plaintiff's Countermotion to
 16 Compel Discovery.

17 10. In my Affidavit of Fees and Costs, which was submitted on January 31, 2013
 18 (Dkt. 49), I requested that this Court award Plaintiff \$10,000 in sanctions.

19 11. As Plaintiff has incurred an additional \$4,535 in attorneys' fees associated with
 20 responding to Defendants' Objection to this Court's Order Granting Plaintiff's Countermotion to
 21 Compel Discovery, I would request that this Court award Plaintiff \$14,535 in sanctions.

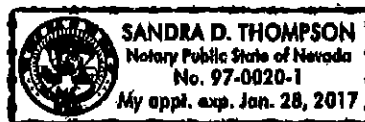
22
 23 STATE OF NEVADA
 24 COUNTY OF CLARK

25 SUBSCRIBED AND SWORN to before me this

26 16th day of May, 2013, by Charles McCrea, Jr.

27 *Sandra D. Thompson*
 28 NOTARY PUBLIC in and for the
 County of Clark, State of Nevada.

Charles H. McCrea, Jr.
 Charles H. McCrea, Jr. (NSB #104)



Dominic Anthony Marrocco v. Mark A. Hill, et al. (Case No. 2:12-cv-00028-JCM-RJJ)

Total Fees: \$4,535

Charles H. McCrea, Jr.

Date	Hours	Description
2/11/2013	0.3	Conference with Ketan Bhirud regarding Defendants' Objection to Order Granting Counter-motion to Compel.
2/21/2013	0.8	Work on Response to Defendants' Objection to Order Granting Counter-motion to Compel.
CEM Total: \$440 at \$400/hr		
	1.10	

Ketan Dinkar Bhirud

Date	Hours	Description
2/11/2013	0.3	Conference with Charles H. McCrea regarding Defendants' Objection to Order Granting Counter-motion to Compel.
2/11/2013	1.0	Reviewed Defendants' Objection to Order Granting Counter-motion to Compel.
2/11/2013	1.0	Began preparing Response to Defendants' Objection to Order Granting Counter-motion to Compel.
2/12/2013	1.5	Reviewed all prior motions regarding compelling discovery.
2/12/2013	2.0	Researched law regarding duty to respond to discovery requests.
2/14/2013	1.5	Continued drafting Response to Defendants' Objection to Order Granting Counter-motion to Compel.
2/18/2013	5.5	Continued drafting Response to Defendants' Objection to Order Granting Counter-motion to Compel.
2/20/2013	4.0	Continued revising Response to Defendants' Objection to Order Granting Counter-motion to Compel.
2/21/2013	0.3	Continued revising Response to Defendants' Objection to Order Granting Counter-motion to Compel.
KDB Total: \$4,095 at \$260/hr		
	15.75	

Exhibit 1 to Supplemental Affidavit of Fees and Costs